

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters



and Decisions of the United States Court of Appeals for the Federal Circuit and the United States Court of International Trade

Vol. 18

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No. 41

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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Administrative Programs, Public Services and Information Materials Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

U.S. Customs Service

Treasury Decisions

(T.D. 84-196)

Bonds

Approval and Discontinuance of Bonds on Customs Form 7587 for the Control of Instruments of International Traffic of a Kind Specified in Section 10.41a of the Customs Regulations

Bonds on Customs Form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: September 21, 1984.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
American Oceanic Shipping Corp., 837 Gravier St., New Orleans, LA; Old Republic Ins. Co. D 5/24/84	May 25, 1983	May 26, 1983	New York Seaport \$50,000
Box Carribbean Line Agencies, Inc., 29 Broadway, New York, NY; Old Republic Ins. Co. D 6/27/84	Sept. 22, 1983	Sept. 26, 1983	New York Seaport \$30,000
Carriers Maritime Agency, Inc., 17 Battery Place, New York, NY; American Casualty Company of Reading, PA D 9/9/84	July 27, 1983	July 28, 1983	New York Seaport \$10,000
Carte Electric Ltd., 1995 Logan Ave., Winnipeg, Manitoba, Canada; St. Paul Fire & Marine Ins. Co. D 8/22/84	July 1, 1974	July 19, 1974	Detroit, MI \$10,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
East Coast Overseas Corp. (a NY Corp.), 21 West St., New York, NY; American Motorists Ins. Co.	May 22, 1984	May 22, 1984	New York Seaport \$10,000
L. Fatato, Inc., 314-18 Second St., Brooklyn, NY; American Motorists Ins. Co. D 7/27/84	May 20, 1977	May 20, 1977	New York Seaport \$10,000
The Fleeting Organization, Inc., One Tampa City Center, 19th Floor, Tampa, FL; Washington International Ins. Co.	Aug. 14, 1984	Aug. 15, 1984	Tampa, FL \$10,000
Adalberto Gonzalez, an individual d/b/a/ Gonzalez Customs Service, 529 Webster St., Eagle Pass, TX; Old Republic Ins. Co.	June 27, 1984	June 29, 1984	Laredo, TX \$10,000
Humko Chemical, P.O. Box 125, Memphis, TN; Washington International Ins. Co.	June 14, 1984	June 29, 1984	Los Angeles, CA \$50,000
Inter-Maritime Forwarding Co., Inc., One World Trade Center, New York, NY; American Motorists Ins. Co. (PB 8/23/82) D 6/25/84 ¹	June 11, 1984	June 25, 1984	New York Seaport \$10,000
Korea Shipping West America Inc., 100 Oceangate, Suite 604, P.O. Box 289, Long Beach, CA; Washington International Ins. Co.	Aug. 14, 1984	Aug. 20, 1984	Los Angeles, CA \$50,000
Matson Navigation Co., Inc., 333 Market St., San Francisco, CA; Aetna Ins. Co. (PB 8/15/74) D 8/15/84 ²	Aug. 15, 1984	Aug. 15, 1984	San Francisco, CA \$10,000
Medafrica Line (USA), Inc., 22 Cortland St., New York, NY; American Motorists Ins. Co. D 6/8/84	Apr. 8, 1982	Apr. 9, 1982	New York Seaport \$10,000
Nauru Pacific Line, 841 Bishop St., Suite 506, Honolulu, HI; Old Republic Ins. Co.	July 12, 1984	July 13, 1984	Honolulu, HI \$20,000
Pacific Southwest Seed Grain, Inc., P.O. Box 5540, Yuma, AZ; American Motorists Ins. Co.	June 6, 1984	June 15, 1984	Los Angeles, CA \$50,000
Royal Netherlands Steamship Co., 5 World Trade Center, New York, NY; American Motorists Ins. Co. D 7/27/84	Mar. 24, 1976	Jan. 21, 1976	New York Seaport \$10,000
Salen Shipping Agencies, Inc., Pier A-2, Long Beach, CA; Washington International Ins. Co.	May 1, 1984	May 24, 1984	Los Angeles, CA \$50,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Sea-Land Agencies International Inc., 10 Parsonage Rd., Edison, NJ; American Motorists Ins. Co.	July 2, 1984	July 12, 1984	New York Seaport \$10,000
Southern Steamship Agency Inc., P.O. Box 2188, Mobile, AL; Insurance Company of North America	June 18, 1984	June 18, 1984	Mobile, AL \$10,000
Taggart Service Ltd., 2 Wilson St. W., Perth, Ontario, Canada; Old Republic Ins. Co.	Aug. 21, 1984	Aug. 31, 1984	Ogdensburg, NY \$10,000
Tasa United Agency, Inc., 350 Sansome St., San Francisco, CA; Old Republic Ins. Co.	June 11, 1984	June 12, 1984	San Francisco, CA \$10,000
Tenneco Oil & Exploration, Inc., 1100 Louisiana, Houston, TX; Washington International Ins. Co.	July 18, 1984	July 25, 1984	Houston, TX \$10,000
Terra Marine Agencies, Inc., 1001 Howard Ave., Suite 4303, New Orleans, LA; St. Paul Fire & Marine Ins. Co.	Aug. 1, 1984	Aug. 16, 1984	New Orleans, LA \$10,000
Transnuclear Inc., (a NY Corp.), One North Broadway, White Plains, NY; Washington International Ins. Co. (an AZ Corp.) (PB 3/6/72) D 5/29/84 ³	May 22, 1984	May 29, 1984	New York Seaport \$10,000
Wei To Associates, Inc., P.O. Drawer 40, 21750 Main St., Unit 27, Matteson, IL; The Ohio Casualty Ins. Co.	May 15, 1984	June 6, 1984	Chicago, IL \$10,000

¹ Principal is Inter-Maritime Forwarding Co., Inc. and its wholly owned subsidiary: Inter-Maritime Forwarding Co. Air Cargo, Inc.; Surety is Washington International Ins. Co.

² Principal is Matson Navigation Co.; Surety is St. Paul Fire & Marine Ins. Co.

³ Surety is Peerless Ins. Co.

(BON-3-10)
217209

EDWARD B. GABLE, Jr.,
Director,
Carriers, Drawback and Bonds Division.

(T.D. 84-197)

Foreign Currencies—Daily Rates For Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372 (c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published

for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:	
August 1, 1984	\$0.008707
August 2, 1984 .....	.008722
August 3, 1984 .....	.008768
Israel shekel:	
August 1-3, 1984	N/A
South Korea won:	
August 1, 1984 .....	.001228
August 2, 1984 .....	.001229
August 3, 1984 .....	.001230
Taiwan dollar:	
August 1, 1984 .....	.025510
August 2, 1984 .....	.025530
August 3, 1984	N/A

(LIQ-03-01 S:COM CIE)

Dated: August 3, 1984.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-198)

Foreign Currencies—Daily Rates For Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372 (c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:	
August 6, 1984	\$0.008760
August 7, 1984 .....	.008673
August 8, 1984 .....	.008654
August 9, 1984 .....	.008658
August 10, 1984 .....	.008703
Israel shekel:	
August 6-10, 1984	N/A

South Korea won:

August 6, 1984 .....	.001232
August 7, 1984 .....	.001231
August 8, 1984 .....	.001230
August 9, 1984 .....	.001231
August 10, 1984 .....	.001233

Taiwan dollar:

August 6, 1984 .....	.025569
August 7-10, 1984 .....	.025589

(LIQ-03-01 S.COM CIE)

Dated: August 10, 1984.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-199)

Foreign Currencies—Daily Rates For Countries Not on Quarterly
 List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372 (c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:

August 13, 1984	\$0.008624
August 14, 1984 .....	.008673
August 15, 1984 .....	.008753
August 16, 1984008726
August 17, 1984008718

Israel shekel:

August 13-17, 1984	N/A
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South Korea won:

August 13, 1984001234
August 14, 1984001233
August 15, 1984001233
August 16, 1984 .....	.001234
August 17, 1984 .....	.001235

Taiwan dollar:

August 13, 1984	N/A
August 14-17, 1984 .....	.025589

(LIQ-03-01 S:COM CIE)

Dated: August 17, 1984.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-200)

Foreign Currencies—Daily Rates For Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372 (c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:

August 20, 1984	\$0.008677
August 21, 1984 .....	.008622
August 22, 1984 .....	.008654
August 23, 1984008684
August 24, 1984008696

Israel shekel:

August 20-24, 1984	N/A
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South Korea won:

August 20, 1984001235
August 21, 1984001234
August 22, 1984001232
August 23, 1984001233
August 24, 1984001234

Taiwan dollar:

August 20-24, 1984025589
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(LIQ-03-01 S:COM CIE)

Dated: August 24, 1984.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-201)

Foreign Currencies—Daily Rates For Countries Not on Quarterly List

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372 (c)), has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Greece drachma:	
August 27, 1984	\$0.008696
August 28, 1984 .....	.008647
August 29, 1984 .....	.008658
August 30, 1984 .....	.008647
August 31, 1984 .....	.008641
Israel shekel:	
August 27-31, 1984	N/A
South Korea won:	
August 27, 1984 .....	.001234
August 28-29, 1984 .....	.001233
August 30, 1984 .....	.001234
August 31, 1984 .....	.001233
Taiwan dollar:	
August 27-31, 1984 .....	.025589

(LIQ-03-01 S.COM CIE)

Dated: August 31, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-202)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 84-162 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs

purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Brazil cruzeiro:	
August 1-2, 1984	\$0.000525
August 3, 1984 .....	.000517
New Zealand dollar:	
August 1, 1984 .....	.49430
August 2, 1984 .....	.46300
August 3, 1984 .....	.50000
Republic of South Africa rand:	
August 1, 1984 .....	.59950
August 2, 1984 .....	.60930
August 3, 1984 .....	.64500
Venezuela bolivar:	
August 1, 1984 .....	.078125
August 2, 1984	N/A
August 3, 1984	N/A

(LIQ-03-01 S:COM CIE)

Dated: August 3, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-203)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 84-162 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following

Brazil cruzeiro:	
August 6-8, 1984	\$0.000517
August 9-10, 1984 .....	.000510
Mexico peso:	
August 6-10, 1984	N/A
New Zealand dollar:	
August 6, 1984 .....	.49900
August 7, 1984 .....	.49620

August 8, 1984 .....	.49700
August 9, 1984 .....	.49680
August 10, 1984 .....	.49850
Republic of South Africa rand:	
August 6, 1984 .....	.63900
August 7, 1984 .....	.61830
August 8, 1984 .....	.62500
August 9, 1984 .....	.63550
August 10, 1984 .....	.63150
Venezuela bolivar:	
August 6-10, 1984	N/A

(LIQ-03-01 S:COM CIE)

Dated: August 10, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-204)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 84-162 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Brazil cruzeiro:	
August 13-15, 1984	\$0.000510
August 16-17, 1984 .....	.000502
China P. R. yuan:	
August 13, 1984 .....	.420751
Mexico peso:	
August 13-17, 1984	N/A
New Zealand dollar:	
August 13, 1984 .....	.49700
August 14-15, 1984 .....	.50000
August 16, 1984 .....	.50120
August 17, 1984 .....	.50200
Republic of South Africa rand:	
August 13, 1984 .....	.62380

August 14, 1984 .....	.64250
August 15, 1984 .....	.65100
August 16, 1984 .....	.66000
August 17, 1984 .....	.65000
Venezuela bolivar:	
August 13, 1984 .....	.079051
August 14-17, 1984	N/A

(LIQ-03-01 S:COM CIE)

Dated: August 17, 1984.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-205)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 84-162 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Brazil cruzeiro:	
August 20, 1984	\$0.000502
August 21-23, 1984 .....	.000493
August 24, 1984 .....	.000485
China P.R. yuan:	
August 21, 1984 .....	.419516
August 22, 1984 .....	.415144
August 23-24, 1984 .....	.416181
Mexico peso:	
August 20-24, 1984	N/A
New Zealand dollar:	
August 20, 1984 .....	.50100
August 21, 1984 .....	.50020
August 22, 1984 .....	.49950
August 23, 1984 .....	.50080
August 24, 1984 .....	.50060
Republic of South Africa rand:	
August 20, 1984 .....	.64800

August 21-22, 1984 .....	.64400
August 23, 1984 .....	.64380
August 24, 1984 .....	.64250
Venezuela bolivar:	
August 20-24, 1984	N/A

(LIQ-03-01 S:COM CIE)

Dated: August 24, 1984.

ANGELA DEGAETANO,
Chief,
Customs Information Exchange.

(T.D. 84-206)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision 84-162 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Brazil cruzeiro:	
August 27-29, 1984	\$0.000485
August 30, 1984 .....	.000461
August 31, 1984 .....	.000475
China P.R. yuan:	
August 27, 1984 .....	.416181
August 28-31, 1984 .....	.413291
Mexico peso:	
August 27-31, 1984	N/A
New Zealand dollar:	
August 27, 1984 .....	.50050
August 28, 1984 .....	.49970
August 29, 1984 .....	.50030
August 30, 1984 .....	.49930
August 31, 1984 .....	.49950
Republic of South Africa rand:	
August 27, 1984 .....	.64170
August 28, 1984 .....	.64330
August 29, 1984 .....	.64400
August 30, 1984 .....	.63900

August 31, 1984 .....	.63600
Venezuela bolivar:	
August 27-31, 1984	N/A

(LIQ-03-01 S:COM CIE)

Dated: August 31, 1984.

ANGELA DeGAETANO,
Chief,
Customs Information Exchange.

U.S. Customs Service

General Notice

Application for Recordation of Trade Name: "L.A. Gear California, Inc."

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "L.A. GEAR CALIFORNIA, INC." used by L.A. Gear California, Inc., a corporation organized under the laws of the State of California, located at 122 West 25th Street, Los Angeles, California 90007. The application states that the trade name is used in connection with the following merchandise manufactured in Hong Kong, Taiwan, Korea, Brazil and the United States: men's, women's and children's sportwear (specifically shirts, skirts, shorts, pants, dresses, jackets and jumpsuits); footwear, fashion accessories (specifically hosiery, leather and nylon handbags, and carrying bags).

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

DATE: Comments must be received on or before November 26, 1984.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Entry, Licensing and Restricted Merchandise Branch, 1301 Constitution Avenue, NW., Room 2417, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

DATED: September 19, 1984.

DONALD W. LEWIS,
*Director, Entry Procedures
and Penalties Division.*

[Published in the Federal Register, September 25, 1984 (49 FR 37688)]

United States Court of International Trade

One Federal Plaza

New York, N.Y. 10007

Chief Judge

Edward D. Re

Judges

Paul P. Rao
Morgan Ford
James L. Watson

Gregory W. Carman
Jane A. Restani
Dominick L. DiCarlo

Senior Judges

Frederick Landis

Herbert N. Maletz

Bernard Newman

Samuel M. Rosenstein

Nils A. Boe

Clerk

Joseph E. Lombardi

Decisions of the United States Court of International Trade

(Slip Op. 84-103)

PEUGEOT MOTORS OF AMERICA, INC., PLAINTIFF, *v.* UNITED STATES,
DEFENDANT

Before FORD, *Judge*.

Court No. 80-9-01400

The imposition of additional duties at liquidation is not a case of retroactive assessment of duty which violates the requirement of due process. *Dart Export Corp. v. United States*, 43 CCPA 64, C.A.D. 610 (1956), cert. denied 352 U.S. 824 (1956).

The principle of "Established and Uniform Practice" is not applicable to appraisalment.

The process of appraising merchandise pursuant to 19 U.S.C. § 1500, including foreign investigation, is in the nature of a fact-finding activity and not a rule making process as defined in 5 U.S.C. § 551(4)(5). *American Express Co. v. United States*, 60 CCPA 86, C.A.D. 1087, 472 F. 2d 1050 (1973).

[Plaintiff's motion for summary judgment denied; Defendant's cross-motion for summary judgment granted.]

(Decided September 13, 1984)

Paul, Weiss, Rifkind, Wharton & Garrison (Lewis R. Clayton on the briefs; Steven B. Rosenfeld and Lee J. Dobkin, of counsel; and Alan S. Hays) for the plaintiff.

Richard K. Willard, Acting Assistant Attorney General; David M. Cohen, Director, Commercial Litigation Branch; (A. David Lafer and Francis J. Sailer on the brief; Edward N. Maurer, of counsel) for the defendant.

FORD, Judge: This action contests Customs' appraisal of plaintiff's automobiles for the model year 1974. Entries were made at New York, Norfolk, Portland and Los Angeles. The automobiles are included in the "Final List", T.D. 54521, and were appraised on the basis of cost of production (COP) pursuant to section 402a(f) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1402(f).¹ There is no dis-

¹ Repealed by Pub. L. 96-39, 93 Stat. 144, 201.

pute that cost of production is the proper basis of appraisement. However, plaintiff asserts the value arrived at by Customs is erroneous.

The liquidation based upon the erroneous appraisal should be set aside, according to plaintiff, since Customs applied "retroactively" a "new" interpretation of section 402a(f), *supra*, contrary to the general principles of administrative and constitutional law. Plaintiff also urges that an "unreasonable and wrongful delay" of the liquidation, in violation of the Administrative Procedure Act and Customs Regulations, requires the liquidation be set aside.

Plaintiff has moved pursuant to Rule 56(a) of the Rules of this Court for summary judgment. Defendant has cross-moved for summary judgment under Rule 56(b).

The statutory provisions involved provide as follows:

Final list published by the Secretary of the Treasury pursuant to section 6(a), Public Law 927, 84th Congress.

T.D. 54521:

* * * * *

Every article specified in such final list which is entered, or withdrawn from warehouse, for consumption on or after the thirtieth day after the date of publication of such final list in the Federal Register, shall be appraised in accordance with the provisions of section 402a of the Tariff Act of 1930, as amended.

* * * * *

19 U.S.C. § 1402:

1402. Value (alternative).—(a) Basis.—For the purposes of this Act [§ 1202 et seq. of this title] the value of imported articles designated by the Secretary of the Treasury as provided for in section 6(a) of the Customs Simplification Act of 1956 [not to this section] shall be—

* * * * *

(3) If the appraiser determines that neither the foreign value, the export value, nor the United States value can be satisfactorily ascertained, then the cost of production;

* * * * *

(f) Cost of production.—For the purposes of this title the cost of production of imported merchandise shall be the sum of—

(1) The cost of materials of, and of fabrication, manipulation, or other process employed in manufacturing or producing such or similar merchandise, at a time preceding the date of exportation of the particular merchandise under consideration which would ordinarily permit the manufacture or production of the particular merchandise under consideration in the usual course of business;

(2) The usual general expenses (not less than 10 per centum of such cost) in the case of such or similar merchandise;

(3) The cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the particular merchandise under consideration in condition, packed ready for shipment to the United States; and

(4) An addition for profit (not less than 8 per centum of the sum of the amounts found under paragraphs (1) and (2) of this subdivision) equal to the profit which ordinarily is added, in the case of merchandise of the same general character as the particular merchandise under consideration, by manufacturers or producers in the country of manufacture or production who are engaged in the production or manufacture of merchandise of the same class or kind.

Section 315(d) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1315(d):

(d) No administrative ruling resulting in the imposition of a higher rate of duty or charge than the Secretary of the Treasury shall find to have been applicable to imported merchandise under an established and uniform practice shall be effective with respect to articles entered for consumption or withdrawn from warehouse for consumption prior to the expiration of thirty days after the date of publication in the Federal Register of notice of such ruling; but this provision shall not apply with respect to the imposition of antidumping duties or the imposition of countervailing duties under section 1303 of this title.

Plaintiff's position, that the appraisalment should be set aside since it is "retroactively" applied by virtue of a "new" interpretation of the COP statute, is without merit. Under the statutory provisions covering importations, duties can never be collected prospectively. At the time of importation "estimated" duties are deposited with Customs. The merchandise is thereafter appraised, classified and liquidated in accordance with 19 U.S.C. 1500.² The liquidation is the final computation and ascertainment of duties due on the merchandise covered by the entries. It is therefore apparent that the final collection of duties must be "retroactive" since any increase or decrease of duties as a result of liquidations can only take place at a time subsequent to the time of entry. The question of retroactive assessment of duty was considered by the Court of Customs and Patent Appeals in *Dart Export Corp. v. United States*, 43 CCPA 64, C.A.D. 610 (1956), cert. denied 352 U.S. 824 (1956), wherein the Court made the following comment:

²19 U.S.C. § 1500:

§ 1500. Appraisalment, classification, and liquidation procedures.

The appropriate customs officer shall, under rules and regulations prescribed by the Secretary—

(a) appraise merchandise in the unit of quantity in which the merchandise is usually bought and sold by ascertaining or estimating the value thereof by all reasonable ways and means in his power, any statement of cost or costs of production in any invoice, affidavit, declaration, or other document to the contrary notwithstanding;

(b) ascertain the classification and rate of duty applicable to such merchandise;

(c) fix the amount of duty to be paid on such merchandise and determine any increased or additional duties due or any excess of duties deposited; and

(d) liquidate the entry of such merchandise; and

(e) give notice of such liquidation to the importer, his consignee, or agent in such form and manner as the Secretary shall prescribe in such regulations.

The importer also argues that the imposition of additional duties under the statute at the time of liquidation is a "case of retroactivity so arbitrary, capricious, and unreasonable as to violate the requirement of due process." It is our view that this argument is not well founded. We cannot see where the imposition of additional duties at the time of liquidation is retroactive in an arbitrary manner, as urged by appellant, because the statute itself gives ample notice that there may be a change from the duties assessed at entry at the time of liquidation.

The question of whether the appraisalment herein violated the principle of "established and uniform practice" must also be resolved in favor of defendant. Plaintiff contends the change in interpretation of the COP statute would nullify the liquidation as a violation of an established and uniform practice. The basis of this position is the ambiguity of the statute and the right of an importer to rely upon a long standing practice. The cases of *Henry Clay and Bock & Co. v. United States*, 41 CCPA 45, C.A.D. 527 (1953), *Commonwealth Oil Refining Co. v. United States*, 60 CCPA 162, 480 F.2d 1352 (1973), and *United States v. Electrolux Corp.*, 46 CCPA 143, C.A.D. 718 (1959), relied upon by plaintiff, relate to ambiguous statutes. The cases of *United States v. H. Bayersdorfer & Co.*, 16 Ct. Cust. Appls. 43, T.D. 42717 and *Benrus Watch Co. v. United States*, 53 Cust. Ct. 28, C.D. 2469 (1964), relied upon by plaintiff, relate to long-established administrative practice concerning classification. Reference to ascertaining the cost of production goes back as far as the Tariff Act of 1883 (section 9) and has continued throughout the various tariff acts. The question of ambiguity has not been satisfactorily established and in fact need not be considered under the circumstances of this case.

It is noted that the statutory provision covering uniform practice (19 U.S.C. 1315(d)) begins with "No administrative ruling resulting in the imposition of a higher rate of duty or charge * * *." This relates to the imposition of a rate of duty which is imposed under the classification provisions of 19 U.S.C. § 1500 and not the appraisalment provisions of 19 U.S.C. § 1500 and § 1402. Uniformity in classification, as indicated by the *Bayersdorfer* and *Benrus* cases, *supra*, was intended to be covered by section 1315(d). Appraisalment is conceptually different from classification. In appraisalment every transaction stands independently. The same merchandise from the same manufacturer sold to a different purchaser may result in an entirely different appraisalment, as well as the basis of appraisalment, depending upon the terms, conditions, and restrictions, etc. of the sale. Consequently, a uniform practice of appraisalment is not possible, nor was the law intended to encompass appraisalment under the uniformity provisions. *Hensel, Bruckmann & Lorbacher, Inc. v. United States*, 44 Cust. Ct. 722, Reap. Dec. 9709 (1960), *aff'd* 46 Cust. Ct. 779, A.R.D. 130 (1961), *aff'd* 49 CCPA 15, C.A.D. 787 (1962). This being so, the fact that Customs had accepted (with

some changes) plaintiff's COP figures from 1958 to 1970 does not endow upon plaintiff the right to expect the formula utilized to remain unchanged.

Plaintiff's contention that the time of liquidation was unreasonably delayed in violation of the APA and the Customs Regulations is untenable. Under the present statutory provisions, 19 U.S.C. § 1504 (not in effect at the time the involved merchandise was entered) the entry is deemed liquidated as entered if Customs had not liquidated the entry within one year from the date of entry or withdrawal from warehouse. Congress had not prescribed a time period within which to liquidate entries prior to this provision as is evident from the statement of Reason for Change contained in S. Rep. No. 95-788 at 832, which contains the following:

Reason for change.—The provisions adopted by the committee [section 209] would increase certainty in the customs process for importers, surety companies, and other third parties with a potential liability relating to a customs transaction. *Under the present law, an importer may learn years after goods have been imported and sold that additional duties are due, or may have deposited more money for estimated duties than are actually due but be unable to recover the excess for years as he awaits liquidation.* Surety companies, which are jointly liable with importers for additional duties, would be better able to control their liabilities. Sureties would also be better protected against losses resulting from the dissolution of their principals in instances where there has been undue delay in liquidating entries. [Emphasis supplied.]

Plaintiff's citation of section 159.51 of the Customs Regulations does not support its position that said regulation was violated by the delay in liquidation. Section 159.51, *supra*, refers to suspensions of liquidation, which are entirely different than delay. The term suspension is a term of art utilized in Customs jurisprudence which permits the action to remain in a hiatus until a final judicial determination is made. The delay occasioned by the overseas investigation did not amount to a suspension nor did it violate any customs regulations in existence at the time of entry.

Neither did the delay result in a violation of the Administrative Procedures Act nor was the delay a result of conduct which was arbitrary, capricious, an abuse of discretion and otherwise not in accordance with laws as prescribed by § 706(2)(A) of the Administrative Procedures Act.³ The process of appraising the merchandise pursuant to 19 U.S.C. § 1500, including a foreign investigation, is in the nature of a fact-finding activity and not a rule or rulemaking

³ § 706. Scope of review:

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

(2) hold unlawful and set aside agency action, findings, and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

process as defined in 5 U.S.C. § 551(4), (5).⁴ *American Express Co. v. United States*, 60 CCPA 86, C.A.D. 1087, 472 F.2d 1050 (1973). In any event Customs was not, at the time involved herein, required to liquidate entries within any particular time period. In *Dart* the court, considering this contention, made the following observation:

The importer has presented still another argument as follows: "If the collector may liquidate more than 60 days from the date of entry, he may not delay indefinitely but must liquidate within a 'reasonable time.' Two years was not a reasonable time in the present case." Appellant argues that the reason two years between the time of entry and the date of liquidation was unreasonable in this case was because there was very little investigative work done by the collector during this period, and that the intervening delays were entirely unexplained. However, appellant has not shown that there was any departure from the usual administrative practice as defined by the applicable statutes. While the testimony in the record shows that any delays which occurred prior to liquidation were not a result of the importer's action, this is far from a showing that there were unreasonable delays on the part of the collector, as appellant would have us believe. It is our opinion that the facts of the present case show that liquidation occurred in the due course of events after entry, and therefore not at an unreasonable time after entry. Furthermore, the reasonableness of the time of liquidation is not a factor to be considered in this class of cases since, according to the interpretation given previous tariff statutes, there is no time limit within which the collector shall make his original liquidation, *Vitelli & Son v. United States*, *supra*; *United States v. DeRivera*, *supra*. This, as far as we know, is still the law under the Tariff Act of 1930.

In view of the foregoing, plaintiff's motion for summary judgment is denied and defendant's cross-motion for summary judgment is granted. The action is, therefore, dismissed.

Judgment will be entered accordingly.

⁴ § 551. Definitions.

(4) "rule" means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing;

(5) "rule making" means agency process for formulating, amending, or repealing a rule;

(Slip Op. 84-104)

HARWOOD MANUFACTURING COMPANY, A DIVISION OF ELGIN
NATIONAL INDUSTRIES, PLAINTIFF, *v.* UNITED STATES, DEFENDANT

Court No. 82-5-00724

Court No. 82-5-00725

(Consolidated)

Before: CARMAN, *Judge*.Memorandum to Accompany Order on Defendant's Motion for
Rehearing and Amendment of Judgment

[Defendant's motion granted in part.]

(Decided September 19, 1984)

Stack & Filpi (Mark D. DeBofsky at the trial) for plaintiff.*Richard K. Willard*, Acting Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch, Civil Division (*Jerry P. Wiskin* at the trial) for the defendant.

CARMAN, *Judge*: Defendant moves for rehearing and amendment of judgment pursuant to Rule 59 of the Rules of this court.¹ Defendant contends that in Slip Op. 84-57, the court mistakenly afforded GSP treatment to five of the disputed entries. Defendant also maintains the court erred by failing to consider the headnote definition for "clock cases" and by applying an incorrect test in overruling the statutory presumption of correctness. In Slip Op. 84-57, the court, after trial, ruled that the imported merchandise, consisting of wood and rattan frames, was classifiable under item A222.60 of the Tariff Schedules of the United States (TSUS) and entitled to duty-free entry under the Generalized System of Preferences (GSP). The classification of the United States Customs Service (Customs) under item 720.34, providing for "clock cases and parts thereof," was overruled because the merchandise, in its imported condition, was found not to be suitable for use as a clock case.

The judgment in Slip Op. 84-57 must be modified to the extent that GSP treatment was afforded to five of the disputed entries.

This action, as consolidated, covers six entries. At the trial, Plaintiff's Exhibits 5, 8, and 11 were offered and consisted of three Customs Certificates of Origin (Form A), and, to the court's understanding, covered five of the disputed entries. It is now clear that two of the disputed entries, Nos. 81-507696-0 and 81-508568-9,

¹ Rule 59(a) of the Rules of the United States Court of International Trade provides:

(a) Grounds. A new trial or rehearing may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the United States; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in suits in equity in the courts of the United States. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

were not covered by the Form A's introduced at trial. Since the filing of the Form A is a condition precedent to GSP treatment, see 19 C.F.R. § 10.112 (1983),² those two entries should not have been accorded GSP treatment. Accordingly, duty must be assessed on entries 81-507696-0 and 81-508568-9 at the rate of 11 percent ad valorem.

With respect to entries 81-507871-9, 81-507987-3 and 81-507266-3, plaintiff filed Form A's at the trial. See Plaintiff's Exhibits 5, 8, 11. Counsel for defendant noted an objection, maintaining that plaintiff had laid no foundation for the late introduction of the Form A's. Under section 10.112 of the Customs Regulations, defendant contended, it was incumbent on plaintiff to demonstrate its freedom from willful negligence or fraudulent intent in explaining why the Form A's were not submitted at the time the entries were made. The court acknowledged the objection and reserved decision thereon.

In Slip Op. 84-57, the court gave effect to Plaintiff's Exhibits 5, 8, and 11. The court interpreted section 10.112 as placing on defendant the burden of showing plaintiff's willful negligence or fraudulent intent in not filing the Form A's at entry. This burden properly rests on plaintiff. See, e.g., *Mattel, Inc. v. United States*, 67 CCPA 74, 76, 624 F.2d 1076, 1078 (1980); *Green Giant Co. v. United States*, 79 Cust. Ct. 61, 70 (1977). This burden, minimal as it was, was not satisfied at the trial since plaintiff adduced no evidence on the point.

The language following "*Id.*" and continuing until "*CONCLUSION.*" appearing at page 9 of Slip Op. 84-57 to the effect that section 10.112 places a burden on defendant is hereby vacated and withdrawn. The language appearing at page 10 of Slip Op. 84-57, namely, "and entitled to duty-free entry under the GSP," is similarly vacated and withdrawn.

Defendant also claims the court overlooked the statutory definition of "clock cases" contained in Headnote 2(d), Part 2E, Schedule 7, of the Tariff Schedules of the United States (TSUS).³ The court did not "disregard" this definition as defendant suggests, but, rather, found it nonapplicable. The court found, as a matter of fact, that the merchandise, in its imported condition, simply did not qualify as a clock case and thus could not come within the headnote definition. The imported frames could have been used for virtually anything, ranging from mirrors to paintings.

²19 C.F.R. § 10.112 (1983) provides:

Whenever a free entry or a reduced duty document, form, or statement required to be filed in connection with the entry is not filed at the time of the entry or within the period for which a bond was filed for its production, but failure to file it was not due to willful negligence or fraudulent intent, such document, form, or statement may be filed at any time prior to liquidation of the entry or, if the entry was liquidated, before the liquidation becomes final. See § 113.43(c) of this chapter for satisfaction of the bond and cancellation of the bond charge.

³Headnote 2(d) of Subpart E, Part 2, Schedule 7, TSUS, provides in relevant part:

The term "cases" embraces inner and outer cases, containers, and housings for movements, together with parts or pieces, such as, but not limited to, rings, feet, posts, bases, and outer frames, and any auxiliary or incidental features, which (with appropriate movements) serve to complete the watches, clocks, time switches, and other apparatus provided for in this subpart * * *.

Similarly, and contrary to defendant's assertion that the court applied a "dedication to use" test, the court found as a matter of fact that the merchandise, as imported, was amenable to several uses, including frames for pictures or mirrors. If the court was applying any test at all, it was the time-honored one that, for classification purposes, merchandise must be considered and examined in the condition in which it is imported. See *United States v. Citroen*, 233 U.S. 407, 414-15 (1912). Under this "test," classification of the imported frames under the "clock cases" provision was precluded. "The fact that the article in question was used in the manufacture of [clocks] has no relation to the condition of the article as imported, but to what afterwards the importer did with it." *Worthington v. Robbins*, 139 U.S. 337, 341 (1891).

CONCLUSION

In accordance with the points outlined above, defendant's motion for rehearing and amendment of judgment is granted. All entries in this consolidated action, with the exception of 81-507512-3, which is properly classifiable under item A222.60, TSUS, free of duty, are properly classifiable under item 222.60, TSUS, with duty at the rate of 11 percent ad valorem.

Order accordingly.

Decisions of the Court of International Trade

Abstracts of Abstracted Proceedings

The following abstracts of decisions of the United States Court of International Trade published for the information and guidance of officers and employees of the Customs Service. Decisions are not of sufficient general interest to print in full. The abstracts are to customs officials in easily locating cases and tracing the results of their decisions.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT
P84/377	DiCarlo, J. September 13, 1984	Strickland Enterprises, Inc.	70/39

the United States International Trade

Abstracts

Protest Decisions

DEPARTMENT OF THE TREASURY, *August 19, 1984.*

United States Court of International Trade at New York are officers of the customs and others concerned. Although the print in full, the summary herein given will be of assistance in understanding important facts.

WILLIAM VON RAAB,
Commissioner of Customs.

COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
	Item No. and Rate	Item No. and Rate		
70/39393	Item 523.91 10%	Item 687.60 8.5%	Strickland Enterprises, Inc. v. U.S., C.D. 4009	New York Quartz crystal blanks

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT
P84/378 (see P83/817)	Re, C.J. September 14, 1984	Jet Sonic Corp.	82-2-

COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
	Item No. and Rate	Item No. and Rate		
82-2-00215	Not stated	Item 688.36 5.3% for entry No. 277119	U.S. v. Texas Instruments, Inc., 673 F.2d 1375 (1982)	New York Solid state electronic digital watches; entireties

Appeal to the U.S. Court of Appeals for the Federal Circuit

APPEAL 84-1694 Zenith Radio Corporation, et al., v. The United States of America—TELEVISION RECEIVERS FROM JAPAN—Appeal from Slip Op. 84-78, decided on June 29, 1984, appeal filed on August 30, 1984.

Decision of U.S. Court of Appeals for the Federal Circuit

APPEAL 84-734 Belcrest Linens v. The United States—PILLOW CASES FROM HONG KONG—Appeal from Slip Op. 83-107 filed on December 23, 1983—Affirmed August 21, 1984.



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DEPARTMENT OF THE TREASURY
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